Supreme Court, U.S.
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No. 05-_____

In The

Supreme Court of the United States

James Widtfeldt et al,
Petitioner
v.
Ann Veneman, et al,
Defendants.

On Appeal From
The United States Court of Appeals
For the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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December 19, 2005

Questions Presented

1. Is an electronic mail (e-mail) from a federal court, in the United States District Court of Nebraska, irrefutable proof of service of a court order, where this was the first case of Appellant after signing up for electronic mail, Appellant appeared pro se which required paper mail, the first three months of the case were mailed by regular US Paper Mail as for a Pro Se case, and thereafter Appellant expected regular US mail service, and Appellant's electronic mail service was afflicted with a large number of viruses, malicious advertisements, and electronic worms which completely occupied or substantially occupied the operational time of the computer of Appellant, to the exclusion of reading electronic mail from the court, until approximately the date the default order was entered or shortly thereafter? In spite of anti virus software used up to September 15, 2004, appellant used Paretologic malicious ad removal software at a later date, and after the default, appellant removed over 6000 malicious ads that the Norton anti Virus missed. Later, Norton Internet Security added the malicious ad software, also.

Questions Presented

2. Is a stipulated lease provision providing the landlord is to receive government payments by the United States Department of Agriculture (USDA) and Farm Service Agency (FSA) in crop year 2002 binding on the government which saw the three leases at sign up and later claimed it lost the three leases, where the landlord appellant fully disclosed to the local Farm Service Agency the leases and the nature of the risks taken by lessor appellant, which included risks which the lessees Hilger, Burival and Kilmurry were not willing to take because of previous bad lessee experiences with the FSA, and the fact lessor's land was only divided into two farms until 2004, but that year the FSA required a "reconsolidation" by which the FSA divided lessor's crop land into different farms for every agricultural lessee including the three whose land had crop land and four others who did not rent land with designated crop land, which appellant - included - risks included landlord-wetlands, landlord - noxious weeds, and landlord - sodbuster provisions which only lessor - landlord - appellant Widtfeldt risked for all crop and pasture land of lessor, and which included risks of an irrigation dam in Eagle Creek (there was a

drouth in 2002 and a real risk the creek could not support the irrigation which would require more earthwork by appellant), and an itinerant spray plane had encountered a horizontal tornado and dumped its noxious weed spray over appellant's Hilger lessee cropland before Hilger leased, creating unknown risks which appellant accepted and appellant's renter was unwilling to bear.

3. Is appellant entitled to the protections afforded Horn, in Horn vs Veneman, 319 F.Supp2d902 (N.D. Indiana, S Bend Division, May 20, 2004), wherein enrollment in the FSA-USDA crop program is a license under the Administrative Procedures Act (the "APA"), 5 USC sections 706(1) and (2) which cannot be deprived absent an opportunity at such later date as the FSA loses its records and determines that enrollment is improper, to then properly enroll in a manner considered timely, and thereby retain benefits, if the enrollment has been originally mis-enrolled for any reason?

4. Is appellant entitled to a reduction in state tax appraisal valuations, reduced real estate taxes, and refund of overpayments of state real estate

taxes already made, and accurate retroactive reporting for the last 35 years by the USDA and FSA to the Holt County Nebraska assessor of all Farm Service Agency and United States Department of Agriculture payments in the county, for the purpose of evaluating the impact of the FSA counter cyclical payments, crop reserve payments, and other FSA-USDA benefits on individual tracts of land as to value, where Appellant has been repeatedly deprived of benefits from the FSA-USDA program over the last thirty five years, and the FSA-USDA benefits have been determined in the trade publications to increase the average agricultural land by 25 to 50 percent above the value it would otherwise have?

5. Is appellant entitled to a rebate of federal estate taxes wrongly assessed on appellant's property, and a rebate of Nebraska Real Estate Taxes wrongly assessed on Appellant's property, for the years 1975 through 2005, where the enrollment of 2000, 2001, and 2002 were done while the United States Internal Revenue Service was aggressively attempting to include intellectual and business efforts of appellant in deceased Albert Widtfeldt estate for estate tax purpose, and

immediately following wrongful resolution at valuations too high, the USDA and FSA revoked James Widtfeldt eligibility, suggesting that the USDA and FSA enrollment of appellant was a trick and deceptive action by the USDA and FSA to greatly increase federal estate taxes assessed by the IRS, following which the USDA and FSA initiated another trick to revoke the USDA and FSA payments?

6. Is appellant entitled to have the default dismissal of the United States District Court of Nebraska reversed and begin this action as a class action for all agricultural producers likewise situated, for whom appellant has already done substantial ground breaking work?

7. Do the World Trade Organization Cotton Decisions WT/DS267/AB/R of 3 March 2005 (original in English), and the World Trade Organization Sugar Decisions WT/DS265/AB/R,WR/DS266/AB/R, and WT/DS283/AB/R, finally decided 28 April 2005, which essentially outlawed counter cyclical payments as contrary to the United States Treaties on Free Trade, justify this court in determining

that the USDA-FSA payments were lawfully made to appellant, contrary to the decisions of the USDA-FSA under appeal herein.

PARTIES TO THE PROCEEDING BELOW

In additiion to the parties named in the caption, the following parties appeared below and are petitioners herein:

James Widtfeldt Revocable trust.

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Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

Article XVI, Sixteenth Amendment of the US Constitution, "The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

Article II, Section 2, subpart 2, provides that the President "shall have Power, by and with the

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PETITION FOR WRIT OF CERTIORARI

Petitioner James Widtfeldt et al, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case, appearing in the appendix at A9, A12, A18, A20, A22, A34, and A40. Petitioner wants to amend his petition as filed with the court (without knowledge of defendant's answer), and to have the decision of September 15, 2005 reversed for trial in the Nebraska District Court.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is not selected for

publication, but appears at 132 Fed.Appx.77, 2005 WL1175137(8thCir(Neb.)), May 19, 2005.

The United States District Court of Nebraska memorandum and order and judgment granting default judgment against appellant Widtfeldt, is not published, and appears in 8:05cv0149, on September 15, 2004. Other orders in that case are also copied in the appendix, being those memorandums of document A9, A12, A18, A20, A22, A27, and the United States Court of Appeals at A34.

JURISDICTION

The judgment of the court of appeals was entered on May 19, 2005. The Court of Appeals

denied rehearing en banc on July 22, 2005. This Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

RELEVANT STATUTORY PROVISIONS

The relevant statutory provisions are reproduced in the Appendix at B.

STATEMENT

This is a case under the first amendment of the US Constitution, right to Petition the Government for a redress of grievances, and the Farm Price Support program.

The right to petition the government is

fatally handicapped when the federal government can require lawyers to submit to electronic mail, give a form waiver which when submitted will not register a request for first time participants to also receive paper mail service which they are entitled anyway in pro se cases, and then ridicule appellant's eventual ability to receive electronic mail after a series of efforts to upgrade.

There is a direct parallel in the actions of the FSA which awarded appellant a license to participate in the farm program in 2000 through 2003, after maintaining exclusive control over all the requirements of participation and demanding all conceivable paperwork, then, after appellant relied on the participation in conceding higher real

estate values for federal estate and state real estate taxes, the local FSA magically "lost" all paperwork from the appellant and demanded the counter cyclical payments back, and now attempts to impose all the burdens of the loss on appellant. In each case, both the internet and the FSA, the government has overwhelming control over paperwork or electronic mail, and overwhelming ability to "lose" appellant's paperwork and over reach appellant for the purpose of putting appellant at a severe disadvantage.

Voluminous cases not involving appellant directly, and large numbers of appeals, where the FSA and USDA intentionally, purposely, and by setting up program participants, with probable

malicious objective, do overreach, for example, imposing on agricultural program participants the forfeiting of hundreds of thousands of dollars of earned program benefits for plowing a fraction of an acre of wetlands, does one see the overwhelming importance of Horn vs Veneman.

The government farm program has become subject to the abuses herein, by its size and has become callous and indifferent to individual rights through 7USDCA section 7915 which restricts wetlands, conservation practices, and noxious weed eradication. All are issues in the present case because the appellant's property was leased to several lessees including Hilger, Burival and Kilmurry, and until a local FSA reconstitution in

2004, each was subject to violations by all the others, since the property was treated, according to the records, as only two tracts of land, none of which were rented to only one lessee.

A treaty with foreign nations led to Title 16, 35 USC section 1531, the endangered species act, which imposes burdens on appellant (for example, mountain lions have been released in the area and have taken a liking to calves, pressuring the amount of rent that can be charged; the gambling casinos on nearby Indian Reservations have resulted in more residents with gambling debts who are more likely to succumb to the temptations of cattle theft, with no reduction in land valuations or real estate taxes.

Nebraska's Congressman says the USDA-FSA program is voluntary, but it is not. The USDA-FSA programs are designed to and do inflate land values, rightly for those who receive benefits, and wrongly for those who receive and later forfeit, or never receive benefits. The inflated land values and increased real estate taxes, enforce participation in the USDA-FSA farm program. The program is far from being "voluntary". The electronic waiver form as an attorney in federal courts is not voluntary -- the form is designed so that the court simply won't register any exceptions to the electronic mail waiver, by requesting paper mail, additionally or preferentially. The waiver form is electronic also, and any lawyer who inserts

another PDF blank using Adobe software saying that lawyer wants paper mail also, does not get recorded by the US District Court.

Petitioners allege that the United States District Court of Nebraska violated appellant's rights by depriving Appellant a chance to appear and comply with various procedural court orders, after service on appellant of court orders was changed from exclusive paper mail about halfway through the case (about June 20, 2004) and mangled through exclusive court use of electronic mail, by various electronic viruses, electronic worms, electronic malicious adware or malware, and other unknown interference, and that the said

electronic interference was known or should have been anticipated by the United States District Court of Nebraska, for a first time party in the US District Court, and that the said electronic interference was not waived by any mandatory, required, or ordered electronic mail waiver of the United States District Court of Nebraska which appellant may have executed because disabling interference with electronic mail was not anticipated, continually increasing in difficulty, increasing in severity and complexity to overcome, and ultimately was not overcome during a crucial time in the case.

That respondent Farm Service Agency,

United States Department of Agriculture, violated appellant's license to farm service agency counter cyclical and other US Government crop payments by delaying until after the application or enrollment period ended and then declaring that appellant was not the correct producer and that appellant's lessees were the correct enrollees but it was too late for them to enroll.

Petitioner Widtfeldt was a practicing lawyer at the time of the case filed herein (is now suspended by the State due to hostilities caused by renting to local Hispanic workers, renting to the low level radioactive waste siting which Nebraska defaulted and incurred a $150 million plus penalty

in so doing, and because the local judge "lost" records of a hearing in a formal appointment of a personal representative who needed medical care to finish a case), and had attempted to qualify for electronic mail and electronic case filing through the United States District Court, in approximately March, 2004, but the US District Court and opposing counsel Homan, actually continued to send paper copies of matters filed, as appellant qualified for paper copies as a pro se filer. About June 30, 2004 during the busiest part of irrigation season which required appellant to spend about four hours per day operating irrigation machinery, the United States District Court suddenly and without warning switched to

electronic mail service exclusively, as did opposing counsel, Robert Homan. Appellant was able to turn on appellant's computer, and apparently the electronic mail arrived on appellant's computer, but the computer itself was stalled on various malicious ads and other electronic virus and worm infestations which made the computer unresponsive to appellant Widtfeldt for hours at a time, and as a result of the busy farm schedule, the lack of court and opposing counsel continuing with paper mail, and appellant's computer problems, appellant was unable to and did not receive actual notice of various scheduling orders dated about June 25, 2004 through September 15, 2004, until on or

about September 15, 2004 when appellant was able to overcome through new equipment and software, the electronic virus, worm and malicious ad infestations. As a consequence, appellant had no or ineffective notification of progression orders of the court, and appellant's opportunity to petition the court for redress of grievances against the Farm Service Agency of the United States Department of Agriculture failed, violating appellant's rights.

Petitioners allege, pursuant to Horn Farms, Inc. vs Veneman, 319 F.Supp.2d 902, (May 20, 2004, US District Court N. District Indiana, South Bend Division), that the regulatory scheme for

seeking review of subsidy termination violated the appellant operator's right to procedural due process, that the U.S. Department of Agriculture approval or permission that was required for farmers to participate in subsidy programs was a "license" required by law, within the meaning of the Administrative Procedure Act (APA) provision requiring the agency to provide notice and opportunity to demonstrate or achieve compliance with lawful requirements before withdrawal or revocation of license.

While one can understand how federal judges and federal attorneys could get accustomed to the United States owning the basic technical

underpinnings of the internet, conferring vast technical advantages upon them, particularly in a case where they knew from the case facts that appellant had assumed significant risk of farming loss and was operating several center pivot irrigation systems during June 15 through September 15, the ever increasing danger from viruses, worms, and malicious ads, frequently reach the front page of the newspaper and nearly collapse the internet from time to time, making the actions of the court seem close to if not designed to put the appellant at a disadvantage.

This is a **taking of property without due process case, where the farm program is used to inflate land values**, not only of participants, but of

appellant, whose participation is forfeited long after the paperwork is filed and accepted by the FSA, long after the FSA has paid out benefits, long after appellant has done large amounts of work and conferred benefits on the government, and then the local FSA after all this, loses the paperwork and declares appellant ineligible for some arcane violation that even the FSA can't understand, and long after the participants have any reasonable chance of proving that the government did get all paperwork, by for example, sheriff service of papers or certified mail. The local FSA people seemed honest, and it was impossible to tell they would later deny receiving paperwork and leases, to attempt to work a

forfeiture on appellant.

This is a **right to petition the government for redress of grievance case**, where the government electronic forms require "PDF" format, and where the blanks in the form simply don't show up in the court, if the person signing attempts to limit the nature of the waiver.

This is **an intellectual property case**, where the US government, which currently is severely chastising the Chinese for copying the intellectual property of US citizens, is at the same time, in the federal estate taxes, oblivious to the intellectual property involved in keeping agricultural property functional and profitable, particularly with the Machiavellian efforts of local FSA and

USDA agents to steer benefits to those participants who have the most claim on their sympathies, or in the alternative, confer the benefits on those participants whose insolvency or bankruptcy would reflect most negatively on the said USDA and FSA agents.

I. THE COURTS ARE DIVIDED OVER THE QUESTION PRESENTED.

Horn vs Veneman, supra, provides appellant has a license. The decision appealed from uses the old wrong standard that the FSA-USDA can for any infraction, even highly disproportionate to any damage incurred, suspend and work a revocation of all benefits.

II. THE CIRCUIT CONFLICT IS UNTENABLE GIVE THE IMPORTANCE OF THE QUESTION PRESENTED.

The FSA-USDA program is an essential part of the national economy, and the efforts of the FSA-USDA to work forfeitures for the slightest infractions, result in hardship and perception that the government is dishonest. If the government wants to protect endangered species and have conservation of natural resources, the way to do so is not to enrage local agricultural producers who have been enrolled and then long thereafter, forfeited from the government program.

III. ***HORN VS VENEMAN, SUPRA***, APPLIES TO GIVEN APPELLANT AND APPELLANT'S LESSEES AN OPPORTUNITY TO PROPERLY ENROLL.

Many cases have been spawned by the snail darter type actions of the FSA-USDA to forfeit large benefits, long after the appellant has relied on the payments and conferred numerous benefits on the government, and it is unfair to work massive forfeitures, or to try to start a political vendetta for appellant's support of the low level radioactive waste siting in nearby Boyd County by attempting to slander appellant through vexatious and vicious attacks claiming appellant was not properly enrolled in the USDA-

FSA, when the FSA previously enrolled appellant and carefully examined, with positive results, all the paperwork. To enable the USDA-FSA to become a fringe element in heated political disputes, would do a disservice to the government, and make the USDA-FSA an agency of political terrorism to defeat and harass a major proponent of the Low Level Radioactive Waste siting and a major landlord to Hispanics, American Indians, and other local racial minorities, defeating racial tolerance of Hispanic renters of appellant, exactly the contrary of what the government probably intended.

IV. THE WORLD TRADE ORGANIZATION COTTON AND SUGAR DECISIONS OUTLAW THE USE OF COUNTERCYCLICAL PAYMENTS TO APPELLANTS LESSEES HILGER, BURIVAL AND KILMURRY, AS, IN WTO WORDS, "NOT GREEN" PAYMENTS WHICH ARE CONTRARY TO UNITED STATES TREATY OBLIGATIONS ITEMIZED IN THE WTO APPENDIX A AND B.

The United States has for many years employed vast amounts of economic nationalism in rabidly supporting American farms (as well as government self interest in greatly increasing real estate taxes to the states and estate taxes to the federal and state government, with little or no actual increase in income to farmers, and no real

decrease in the vast up and down cycles of agriculture assets which make a mockery of USDA-FSA programs.)

The US government cannot forever be a bad neighbor on the world scene and still have any influence with free trade arguments. The US government cannot be two faced on intellectual property, and at the same time mulishly insist on including every descendant's intellectual property in the assets of anyone who ever dies. The US government cannot claim it is helping the farmer when it helps so few farmers, and when the government increases taxes on farmers primarily as a result of the USDA-FSA program.

V. APPELLANT IS A PRODUCER, EVEN BY THE EVER CHANGING FSA-USDA DEFINITIONS OF A PRODUCER.

The FSA-USDA attempts to work a forfeiture on appellant by claiming appellant is not a producer, to wit, not involved in crop production, marketing, or other agricultural risk taking.

Not only is the FSA-USDA flying in the face of the US treaty obligations to the World Trade Organization decisions, but Appellant has much more investment in each crop, and much more risk of loss, than any of appellant's lessees. Only the arcane reasoning, and political Tammany Hall strong arming of the FSA because of appellant's

support of the low level radioactive waste siting which offended Nebraska, made this definition so hard to understand.

The Supreme Court could with good effect, clean house with a lot of political minded persons who are wrongly using their offices and wrongful influence in the FSA-USDA to embarrass agricultural producers with forfeiture actions, as a retaliation for locally despised actions such as racial toleration and siting of low level radioactive waste disposal.

CONCLUSION

Appellant is a producer, appellant is entitled to have the US District Court decisions

reversed and have a trial, or in the alternative, have the amount of approximately $7,000 for 2002, and approximately $30,000 for 2000 and 2001, reinstated, 2003 approximately $10,000 paid, all credited as properly paid to appellant, and to have real estate taxes and federal estate tax decisions re-opened with adjustments made for the decreased real estate values from the FSA challenged payments including not only the FSA challenges herein, but FSA challenges before 2000 and after 2003. Appellant requests that the Supreme Court order the USDA and FSA to properly report all payments they make to any person to the county assessor within the county where the payments are made, for properly

evaluating the land therein, and separately value what is being paid for USDA-FSA purposes from other factors in land valuation.

_____ December 19, 2005

James Widtfeldt, Appellant

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APPENDICES

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

JAMES A. WIDTFELDT, d/b/a

JAMES WIDTFELDT REVOCABLE TRUST

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, acting by and through the UNITED STATES DEPARTMENT OF AGRICULTURE, and THE FARM SERVICE AGENCY, and ANN M. VENEMAN, or her successor, acting in her official capacity as Secretary of the United States Department of Agriculture, and MONTE FLETCHER, acting in his official capacity as Farm Service Agency Executive Director et al,

Defendants.

This is an appeal of a final agency decision under the Administrative Procedures Act, 5 U.S.C. && 701 -706 (the APA). In Response to the complaint, the defendants have filed the administrative record (filing 7) and an answer (filing 8).

As this is an appeal of a final agency decision (the Director Review Determination attached to the Complaint as Exhibits b-1 through B-4), this matter will be submitted upon the record and briefs[1] and proposed findings of fact and conclusions of law submitted by the parties. I

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[1]The complaint appears to assert a 42 U.S.C. & 1983 claim against defendants, which appears invalid on its face. Defendants are invited to address the validity of the 1983 claim in their brief.

will require the parties to submit briefs that include proposed findings of fact and conclusions of law. The proposed findings of fact shall be indexed to the record, with reference to page numbers in the agency record (filing 11) page numbers of exhibits in the agency record, etc. The proposed conclusions of law shall concisely state applicable law supporting the stated legal conclusions, and shall include all conclusions of law necessary to decide the case. The proposed findings of fact and conclusions of law shall be sufficiently detailed so that if the court agreed with them and chose to adopt them, they would be sufficient as a written opinion.

IT IS ORDERED

1. This case shall be resolved as if cross-motions for summary judgment have been filed, and the clerk of the court is directed to make appropriate entries into the court's computer- assisted record keeping system to show on the court's motion list that this case is pending on cross-motions for summary judgment and the following briefing dates have been established;

2. Plaintiff shall submit a brief and proposed findings of fact and conclusions of law in the manner directed in this memorandum and order by August 6, 2004;

3. Defendant shall submit a brief and proposed findings of fact and conclusions of

law in the manner directed in this memorandum and order by September 6, 2004.

4. Plaintiff may submit a reply brief by September 20, 2004; and

5. This case shall be ripe for decision on September 21, 2004..

DATED this 6th day of July, 2004.

BY THE COURT:

s/Richard G. Kopf

United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

JAMES A. WIDTFELDT, d/b/a

JAMES WIDTFELDT REVOCABLE TRUST

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, acting by and through the UNITED STATES DEPARTMENT OF AGRICULTURE, and THE FARM SERVICE AGENCY, and ANN M. VENEMAN, or her successor, acting in her official capacity as Secretary of the United States Department of Agriculture, and MONTE FLETCHER, acting in his official capacity as Farm Service Agency Executive Director et al,

Defendants.

MEMORANDUM AND ORDER

Plaintiff filed an amended complaint (filing 11) on July 7, 2004 without seeking leave of the court to amend the complaint. The federal rules permit the amendment of a complaint after a responsive pleading has been filed only upon leave of court or with the written consent of the adverse party. Fed. R. Civ. P. 15(a). As Defendants had already answered the complaint (filing 8), and did not consent in writing to submission of the amended complaint, and as Plaintiff did not seek leave to amend the complaint, I find that the amended complaint should be stricken from the record. I direct Plaintiff's attention to NELR 15.1, which provides in part that a party who moves for leave to amend a pleading must attach a copy of the proposed amended

pleading and shall "set forth specifically the amendments proposed to be made to the original pleading, and shall identify the amendments in the proposed amended pleading."

For the foregoing reasons:

IT IS ORDERED:

1. The amended complaint as filing 11 shall be stricken from the record for noncompliance with Fed. R. Civ. P. 15(a) and NELR 15.1; and

2. If Plaintiff desires to amend the complaint, he must file a motion for leave to amend in compliance with NELR 15.1.

Dated this 9th day of July, 2004.

BY THE COURT: s/ Richard G. Kopf
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

JAMES A. WIDTFELDT, d/b/a
JAMES WIDTFELDT REVOCABLE TRUST

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, acting by and through the UNITED STATES DEPARTMENT OF AGRICULTURE, and
THE FARM SERVICE AGENCY, and
ANN M. VENEMAN, or her successor, acting in her official capacity as Secretary of the United States Department of Agriculture, and
MONTE FLETCHER, acting in his official capacity as Farm Service Agency Executive Director
et al,

Defendants.

MEMORANDUM AND ORDER

A briefing order was established for this action in filing 9. Plaintiff was ordered to submit a brief and proposed findings of fact and conclusions of law by August 6, 2004. Plaintiff has not done so, nor has he sought an extension of time. Now before me is a motion by Defendants (filing 17) seeking permission to file their brief and proposed findings of fact and conclusions of law thirty days after Plaintiff's brief is filed, if a brief is filed.

Upon consideration of the matter, I find that Defendants' motion should be granted. I will also give Plaintiff one more opportunity to submit a brief, and will warn him that I will dismiss this action with prejudice is he fails to

comply with this court order.

IT IS ORDERED:

1. Plaintiff shall file a brief and proposed findings of fact and conclusions of law complying with the requirements set forth in the initial briefing order (filing 9) within 10 days of the date of this order. The 10-day time period shall be computed in the manner specified in Fed. R. Civ. P. (a).

2. Plaintiff is advised that if he does not timely file a brief and proposed findings of fact and conclusions of law, I will dismiss this action with prejudice and without further notice for failure to comply with a court order.

3. The motion in filing 17 is granted. Defendants shall have 30 days following the filing of Plaintiff's brief and proposed findings

of fact and conclusions of law to submit their brief and proposed findings of fact and conclusions of law.

4. Plaintiff may submit a reply brief within 10 days following the filing of Defendants' brief and proposed findings of fact and conclusions of law. The 10-day time period shall be computed in the manner specified in Fed. R. Civ. P. 6(a).

DATED this 27th day of August, 2004.

BY THE COURT:

S/Richard G. Kopf

United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

JAMES A. WIDTFELDT, d/b/a
JAMES WIDTFELDT REVOCABLE TRUST

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, acting by and through the UNITED STATES DEPARTMENT OF AGRICULTURE, and THE FARM SERVICE AGENCY, and ANN M. VENEMAN, or her successor, acting in her official capacity as Secretary of the United States Department of Agriculture, and MONTE FLETCHER, acting in his official capacity as Farm Service Agency Executive Director et al,

Defendants.

MEMORANDUM AND ORDER

This matter is before the court on its own motion. On August 27, 2004, the court entered an order (filing 18) requiring directing Plaintiff to submit a brief and proposed findings of fact and conclusions of law with 10 days. That order advised Plaintiff that failure to timely file a brief and proposed findings of fact and conclusions of law would result in dismissal of this actions with prejudice and without further notice for failure to comply with a court order.

Plaintiff has failed to comply with the court's order. Accordingly, pursuant to terms of the court's prior order (filing 18), Fed. R. Civ. P 41, and NECivR 41.1, the court finds that Plaintiff' claims against the defendants should be dismissed with prejudice.

IT IS ORDERED:

1. This case is dismissed with prejudice; and

2. Judgment shall be entered by separate document.

DATED this 15th day of September, 2004.

BY THE COURT:

S/Richard G. Kopf

United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

JAMES A. WIDTFELDT, d/b/a

JAMES WIDTFELDT REVOCABLE TRUST

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, acting by and through the UNITED STATES DEPARTMENT OF AGRICULTURE, and THE FARM SERVICE AGENCY, and ANN M. VENEMAN, or her successor, acting in her official capacity as Secretary of the United States Department of Agriculture, and MONTE FLETCHER, acting in his official capacity as Farm Service Agency Executive Director et al,

Defendants.

JUDGMENT

Pursuant to the memorandum and order entered this date, judgment is hereby entered in favor of Defendants and against Plaintiff, with prejudice.

DATED this 15th day of September, 2004.

BY THE COURT:

s/Richard G. Kopf

United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

JAMES A. WIDTFELDT, d/b/a
JAMES WIDTFELDT REVOCABLE TRUST

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, acting by and through the UNITED STATES DEPARTMENT OF AGRICULTURE, and
THE FARM SERVICE AGENCY, and
ANN M. VENEMAN, or her successor, acting in her official capacity as Secretary of the United States Department of Agriculture, and
MONTE FLETCHER, acting in his official capacity as Farm Service Agency Executive Director
et al,

Defendants.

This action was dismissed for failure to comply with court orders. Subsequent to dismissal, Plaintiff filed a motion to reopen the case (filing 21). The motion asserts that Plaintiff did not receive electronic notice of filings, in particular the court's briefing orders, and requests that the case be reopened. Upon consideration of the matter, I will deny the motion.

In his motion, Widtfeldt asserts that "[i]n the original filing, {he} believed he had requested service by hard copy, or by mail, of all paperwork, in preference to electronic mail service, and no service of the court orers giving dates were [sic] received by hard copy." (Filing 21.) The motion further represents that Widtfeldt has experienced problems with his internet service provider and did not receive electronic copies of the court's orders. The motion asserts as follows:

Widtfeldt. . . has a local internet service provider that tends to send viruses . and has lost, temporarily or permanently, serveral computers due to virus, worm, or other electronic failures over the summer, and for long periods of time has not had access to the internet records of the court, and for this reason was not aware of orders of this court of June and August, 2004, requiring compliance, and had assumed that paper copies of all orders would be received in duplicate, as had previously been the case.
(Filing 21.)

Although Widtfeldt appeared pro se in this matter, he is an attorney licensed to practice law in Nebraska. Records maintained by the Clerk of the court show that Widtfeldt registered for the court's

electronic case filing system on March 25, 2004, shortly before the complaint in this action was filed. Registration by an attorney constitutes "consent to receive notice electronically and waiver of the right to receive notice by firs class mail," and an agreement by the filing. (Electronic Case Filing System Attorney Registration Form at 5, 7 (available on the court's website, www.ned.uscourts.gov)). Thus even if the complaint had requested that Widtfeldt receive paper copies of filings (and it did not), by registering for electronic filing Widtfeldt waived the right to receive notice by paper copies.

The electronic records of the court show that only one electronic notice sent to Widtfeldt was returned as undeliverable, and that this notice was successfully resent electronically to the address Widtfeldt spacified when registering for

electronic filing. (Filing13.) That email address is the same address listed for Widtfeldt in the current directory of the Nebraska state Bar Association. Despite Widtfeldt's awareness that he had problems with the email account he specified for receipt of electronic notice, record maintained by the Clerk of the court show that Widtfeldt has never logged on to the court's electronic filing system- which would have permitted him to monitor the status of his case.

Accordingly,

IT IS ORDERED that the motion in filing 21 is denied.

DATED this 17th day of September, 2004.

BY THE COURT:

S/Richard G. Kopf

United States District Judge

Case: 8:04-cv-00149-RGK-PRSE Document #: 23

Date Filed: 09/16/2004 Page 1 Addendum A 23

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

JAMES A. WIDTFELDT, d/b/a

JAMES WIDTFELDT REVOCABLE TRUST

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, acting by and through the UNITED STATES DEPARTMENT OF AGRICULTURE, and THE FARM SERVICE AGENCY, and ANN M. VENEMAN, or her successor, acting in her official capacity as Secretary of the United States Department of Agriculture, and MONTE FLETCHER, acting in his official capacity as Farm Service Agency Executive Director et al,

Defendants.

MOTION FOR MORE TIME DUE TO REQUEST FOR COPIES OF ALL PAPERWORK BY HARD COPY, or To OBTAIN ADDITIONAL EMAIL ADDRESS WHICH IS MORE RELIABLE AND TO RE-OPEN CASE TO AVOID NECESSITY OF APPEAL

James Widtfeldt, d/b/a James Widtfeldt Revocable Trust, moves the Court for Enlargement of Time to File a Brief and Respond, for the reasons that:

a) in the original filing, James Widtfeldt believed he had requested service by hard copy, or by mail, of all paperwork, in preference to electronic mail service, and no service of the

court orders giving dates were received by hard copy,

b) James Widtfeldt possibly has become an adversary to someone proficient with internet virus, worm, or other electronic failures, and has a local internet service provider that tends to send viruses on to James Widtfeldt, and has lost, temporarily or permanently, several computers due to virus, worm, or other electronic failures over the summer, and for long periods of time has not had access to the internet records of the court, and for this reason, was not aware of orders of this court of June and August, 2004, requiring compliance, and had assumed that paper copies of all orders would be received in duplicate, as had

previously been the case; James Widtfeldt had previously filed an amended petition with a hard copy, and was about to amend the petition again, and also requests leave to amend the petition.

MOTION FOR MORE TIME AND TO RE-OPEN CASE

c) James Widtfeldt requests that the case be reinstated with 30 days additional time to file a brief and comply with other requirements; if electronic mail is the only way to receive copies, James Widtfeldt will need about twenty days extra to acquire additional computer equipment, and subscribe to additional internet providers, and probably give the court yet another email address than the two listed

below, and then will need email notice to all addresses of each mailing, as each internet provider has occasional hardware failures, and nrtv is off a satellite dish which seems to fail each time the sun is in about the same point in the sky as the satellite, and has to be re-set.
s/Plaintiff, James A. Widtfeldt d/b/a James Widtfeldt
Revocable Trust, James Widtfeldt Revocable Trust, Plaintiff
with CERTIFICATE OF SERVICE

"Eighth Circuit U.S. Court of Appeals
To "Denise M. Lucks"
<docket@ned.uscourts.gov>
Appeals Clerks Office"
<via_no_reply@ck8.uscourts.cc gov>
bcc 07/22/2005 04:43 PM
Subject Via Notice for case 04-3393

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
No. 04-3393

JAMES A. WIDTFELDT, d/b/a

JAMES WIDTFELDT REVOCABLE TRUST

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, acting by and through the UNITED STATES DEPARTMENT OF AGRICULTURE, and THE FARM SERVICE AGENCY, and ANN M. VENEMAN, or her successor, acting in her official capacity as Secretary of the United States Department of Agriculture, and

Addendum A40 Via Noticefor case 04-3393 sent by Michael E. Gans, Clerk of the Court (sent by email successfully on July 22, 2005)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

JAMES WIDTFELDT doing business as
James Widtfeldt Revocable Trust
Appellant

vs

United States of America, acting by
and through United States Department of
Agriculture, et al.
Appellees

Order denying Petition for Rehearing and for Rehearing En Banc

The petition for rehearing en banc is denied. The Petition for rehearing by the panel is also denied. (5128-010199)

July 22, 2005

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-3393

James Widtfeldt, doing business as
James Widtfeldt Revocable Trust,

Appellant, *

v. *

United States of America, acting by and through
United States Department
of Agriculture; The Farm Service *
Agency; Ann M. Veneman, or her *
successor, acting in her official *
capacity as Secretary of the United *
States Department of Agriculture; *
Monte Fletcher, acting in his official *
capacity as Farm Service Agency *
Executive Director, Holt County, *
the State of Nebraska, *
*

Appellees *

Submitted: May 9, 2005
Filed: May 19, 2005

Appeal from the United States
* District Court for the District of Nebraska.
(UNPUBLISHED)

Before BENTON, LAY, AND FAGG, CIRCUIT JUDGES

PER CURIAM.

Attorney James Widtfeldt brought this action seeking review of a decision of the United States Department of Agriculture. After Widtfeldt failed to timely file his brief as the district court* had ordered, the court dismissed the case with prejudice for failure to comply. Widtfeldt moved to reopen arguing he had asked for hard copies of the court's orders, his computer was infected with a virus, and he was unable to obtain the court's electronic notice due to computer difficulties. The district court denied the motion to reopen. Judge Kopf specifically stated:

In his motion, Widtfeldt asserts that "[i] n the original filing, [he] believed he had requested service by hard copy, or my mail, of all paperwork, in preference to electronic mail service, and no service of the court orders giving dates were [sic] received by hard copy." (Filing 21). The motion further represents that Widtfeldt has experienced problems

with his internet service provider and did not receive electronic notice of the court's order. (APP 68). Judge Kopg found:

Although Widtfeldt appeared pro se in this matter, he is an attorney licensed to practice law in Nebraska. Records maintained by the Clerk of the court show that Widtfeldt registered for the court's electronic case filing system on March 25, 2004, shortly before the complaint in this action was filed. Registration by an attorney constitutes "consent to receive notice electronically and waiver of the right to receive notice by firs class mail," and an agreement by the filing. (Electronic Case Filing System Attorney Registration Form at 5, 7 (available on the court's website, www.ned.uscourts.gov)). Thus even if the complaint had requested that Widtfeldt receive paper copies of filings (and it did not), by registering for electronic filing Widtfeldt waived the right to receive notice by paper copies.

---

*The Honorable Richard G. Kopf, United states District Judge for the District of Nebraska.

The electronic records of the court show that only one electronic notice sent to Widtfeldt was returned as undeliverable, and that this notice was successfully resent electronically to the address Widtfeldt specified when registering for

electronic filing. (Filing13.) That email address is the same address listed for Widtfeldt in the current directory of the Nebraska state Bar Association. Despite Widtfeldt's awareness that he had problems with the email account he specified for receipt of electronic notice, record maintained by the Clerk of the court show that Widtfeldt has never logged on to the court's electronic filing system- which would have permitted him to monitor the status of his case. (APP68-60).

Widtfeldt appeals asserting the district court abused its discretion in denying his motion to reopen and in dismissing his appeal. Having carefully reviewed the record, the briefs, and the applicable law, we disagree. The record shows Widtfeldt requested electronic notices and the clerk's records show the notices were successfully transmitted to Widtfeldt. Further, despite Widtfeldt's alleged problems with his electronic mail account, Widtfeldt never logged on to the court's electronic filing system, which would have permitted him to monitor the status of his case. Last, Widtfeldt's claims of computer difficulties are refuted by the fact that on the day the district court electronically transmitted the order dismissing the action, Widtfeldt was online

communicating with the clerk's office. Accordingly, we affirm the district court. See 8th Cir. R. 47B.

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 04-3393

JAMES A. WIDTFELDT, d/b/a
JAMES WIDTFELDT REVOCABLE TRUST

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, acting by and through the UNITED STATES DEPARTMENT OF AGRICULTURE, and THE FARM SERVICE AGENCY, and ANN M. VENEMAN, or her successor, acting in her official capacity as Secretary of the United States Department of Agriculture, and MONTE FLETCHER, acting in his official capacity as Farm Service Agency Executive Director et al,

Defendants.

Addendum A 35 Case: 8:04-cv-00149RGK-PRSE Document: 35-1 Date Filed: 08/12/2005 Page2

8:04CV0149 (US District Court of Nebraska)

Appeal from the United States District Court for the District of Nebraska

JUDGMENT

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court. (5128-010199)

May 19, 2005

Order Entered in Accordance with Opinion:

Clerk, U.S. Court of Appeals, Eighth Circuit.

Findings and Conclusions

For the reasons set out in this Report, the Appellate Body:

as regards procedural matters:

in relation to production flexibility contract payments and market loss assistance payments:

the Panel's finding, in paragraphs 7.118, 7.122, 7.128, and 7.194(ii) of the Panel Report, that Articles 4.2 and 6.2 of the DSU do not exclude expired measures from the potential scope of consultations or a request for establishment of a panel and, therefore, that production flexibility contract payments and market loss assistance payments fell within the Panel's terms of reference; and

that the Panel set out the findings of fact, the applicability of relevant provisions, and the basic rationale behind this finding, as required by Article 12.7 of the DSU; and

in relation to export credit guarantee programs:

the Panel's ruling, in paragraph 7.69 of the Panel Report, that "export credit guarantees to facilitate the export of United States upland cotton, and other eligible agricultural commodities ... are within its terms of reference"; and

the Panel's ruling, in paragraph 7.103 of the Panel Report, that "Brazil provided a statement of available evidence with respect to export credit guarantee measures relating to upland cotton and eligible United States agricultural products other than upland cotton, as required by Article 4.2 of the *SCM Agreement*";

as regards the application of Article 13 of the *Agreement on Agriculture* to this dispute:

in relation to Article 13(a)(ii):

upholds the Panel's finding, in paragraphs 7.388, 7.413, 7.414, and 8.1(b) of the

Panel Report, that production flexibility contract payments and direct payments are not green box measures that fully conform to paragraph 6(b) of Annex 2 of the *Agreement on Agriculture*; and, therefore, are not exempt from actions under Article XVI of GATT 1994 and Part III of the *SCM Agreement* by virtue of Article 13(a)(ii) of the *Agreement on Agriculture*; and

declines to rule on Brazil's conditional request that the Appellate Body find that the updating of base acres for direct payments under the FSRI Act of 2002 means that direct payments are not green box measures that fully conform to paragraph 6(a) of Annex 2 of the *Agreement on Agriculture*; and, therefore, are not exempt from actions under Article XVI of GATT 1994 and Part III of the *SCM Agreement* by virtue of Article 13(a)(ii) of the *Agreement on Agriculture*; and

in relation to Article 13(b)(ii):

modifies the Panel's interpretation, set out in paragraph 7.494 of the Panel Report, of

the phrase "support to a specific commodity" in Article 13(b)(ii) of the *Agreement on Agriculture*; but upholds the Panel's finding, in paragraphs 7.518 and 7.520 of the Panel Report, that Step 2 payments to domestic users, marketing loan program payments, production flexibility contract payments, market loss assistance payments, direct payments, counter-cyclical payments, crop insurance payments, and cottonseed payments (the "challenged domestic support measures") granted "support to a specific commodity", namely, upland cotton;

on the United States' appeal that only the price gap methodology described in paragraph 10 of Annex 3 of the *Agreement on Agriculture* may be used to measure the value of marketing loan program payments and deficiency payments for the purposes of the comparison required by Article 13(b)(ii) of the *Agreement on Agriculture*; and

upholds the Panel's finding, in paragraphs 7.608 and 8.1(c) of the Panel Report, that the "challenged domestic support

measures" granted, in the years 1999, 2000, 2001 and 2002, support to a specific commodity, namely, upland cotton, in excess of that decided during the 1992 marketing year; and, therefore, that these measures are not exempt from actions based on Articles 5 and 6 of the *SCM Agreement* and Article XVI:1 of the GATT 1994 by virtue of Article 13(b)(ii) of the *Agreement on Agriculture*;

as regards serious prejudice:

in relation to Article 6.3(c) of the *SCM Agreement*:

- upholds the Panel's finding, in paragraphs 7.1416 and 8.1(g)(i) of the Panel Report, that the effect of the marketing loan program payments, Step 2 payments, market loss assistance payments, and counter-cyclical payments (the "price-contingent subsidies") is significant price suppression within the meaning of Article 6.3(c) of the *SCM Agreement*, by in turn upholding the Panel's findings:

(A) regarding the "market" and "price" in assessing whether "the effect of the subsidy is ... significant price suppression ... in the same market" within the meaning of Article 6.3(c) of the *SCM Agreement*:

- in paragraphs 7.1238-7.1240 of the Panel Report, that the "same market" may be a "world market";

- in paragraph 7.1247 of the Panel Report, that a "world market" for upland cotton exists; and

- in paragraph 7.1274 of the Panel Report, that "the A-Index can be taken to reflect a world price in the world market for upland cotton"; and

(B) regarding the "effect" of the price-contingent subsidies under Article 6.3(c) of the *SCM Agreement*:

- in paragraphs 7.1312 and 7.1333 of the Panel Report, that "significant price suppression" occurred within the meaning of Article 6.3(c);

- in paragraphs 7.1355 and 7.1363 of the Panel Report, that "a causal link exists" between the price-contingent subsidies and the significant price suppression found by the Panel under Article 6.3(c) and that this link is not attenuated by other factors raised by the United States;

- in paragraphs 7.1173, 7.1186, and 7.1226 of the Panel Report, that it was not required to quantify precisely the benefit conferred on upland cotton by the price-contingent subsidies and, consequently, not identifying the precise amount of counter-cyclical payments and market loss assistance payments that benefited upland cotton; and

- in paragraph 7.1416 of the Panel Report, that the effect of the price-contingent subsidies for marketing years 1999 to 2002 "is significant price suppression ... in the period MY 1999-2002"; and

- finds that the Panel, as required by Article 12.7 of the DSU, set out the

findings of fact, the applicability of relevant provisions, and the basic rationale behind its finding, in paragraphs 7.1416 and 8.1(g)(i) of the Panel Report, that the effect of the price-contingent subsidies is significant price suppression within the meaning of Article 6.3(c) of the *SCM Agreement*; and

in relation to Article 6.3(d) of the *SCM Agreement*:

- finds it unnecessary, for the purposes of resolving this dispute, to rule on the interpretation of the phrase "world market share" in Article 6.3(d) of the *SCM Agreement*, and neither upholds nor reverses the Panel's findings in this regard; and

- declines to rule on Brazil's conditional request for the Appellate Body to find that the effect of the price-contingent subsidies is an increase in the United States' world market share in upland cotton within the meaning of Article 6.3(d) of the *SCM Agreement*;

as regards user marketing (Step 2) payments:

upholds the Panel's findings, in paragraphs 7.1088, 7.1097-7.1098, and 8.1(f) of the Panel Report, that Step 2 payments to *domestic users* of United States upland cotton, under Section 1207(a) of the FSRI Act of 2002, are subsidies contingent on the use of domestic over imported goods that are inconsistent with Articles 3.1(b) and 3.2 of the *SCM Agreement*; and

upholds the Panel's findings, in paragraphs 7.748-7.749, 7.760-7.761, and 8.1(e) of the Panel Report, that Step 2 payments to *exporters* of United States upland cotton, pursuant to Section 1207(a) of the FSRI Act of 2002, are subsidies contingent upon export performance within the meaning of Article 9.1(a) of the *Agreement on Agriculture* that are inconsistent with Articles 3.3 and 8 of that Agreement and Articles 3.1(a) and 3.2 of the *SCM Agreement*;

as regards export credit guarantee programs:

upholds the Panel's finding, in paragraphs 7.901, 7.911, and 7.932 of the Panel Report, that Article 10.2 of the *Agreement on Agriculture* does not exempt export credit guarantees from the export subsidy disciplines in Article 10.1 of that Agreement;

finds that the Panel did not improperly apply the burden of proof in finding that the United States' export credit guarantee programs are prohibited export subsidies under Article 3.1(a) of the *SCM Agreement* and are consequently inconsistent with Article 3.2 of that Agreement;

declines to find that the Panel erred by failing to make the necessary findings of fact in assessing whether the export credit guarantee programs are provided at premium rates that are inadequate to cover long-term operating costs and losses within the meaning of item (j) of the Illustrative List of Export

Subsidies annexed to the *SCM Agreement*; and, consequently,

upholds the Panel's finding, in paragraph 7.869 of the Panel Report, that "the United States export credit guarantee programmes at issue—GSM 102, GSM 103 and SCGP—constitute a *per se* export subsidy within the meaning of item (j) of the Illustrative List of Export Subsidies in Annex I of the *SCM Agreement*", and upholds the Panel's findings, in paragraphs 7.947 and 7.948 of the Panel Report, that these export credit guarantee programs are export subsidies for purposes of Article 3.1(a) of the *SCM Agreement* and are inconsistent with Articles 3.1(a) and 3.2 of that Agreement; and

finds that the Panel did not err in exercising judicial economy in respect of Brazil's allegation that the United States' export credit guarantee programs are prohibited export subsidies, under Article 3.1(a) of the *SCM Agreement*, because they confer a "benefit" within the meaning of Article 1.1 of that Agreement;

as regards circumvention of export subsidy commitments:

reverses the Panel's finding, in paragraph 7.881 of the Panel Report, that Brazil did not establish actual circumvention in respect of poultry meat and pig meat; finds, however, that there are insufficient uncontested facts in the record to complete the legal analysis to determine whether the United States' export credit guarantees to poultry meat and pig meat have been applied in a manner that "results in" circumvention of the United States' export subsidy commitments, within the meaning of Article 10.1 of the *Agreement on Agriculture*;

modifies the Panel's interpretation, in paragraphs 7.882-7.883 and 7.896 of the Panel Report, of the phrase "threatens to lead to .... circumvention" in Article 10.1 of the *Agreement on Agriculture* to the extent that the Panel's interpretation requires "an unconditional legal entitlement" to receive the relevant export subsidies as a condition for a finding of threat of

circumvention, but upholds, for different reasons, the Panel's finding, in paragraph 7.896 of the Panel Report, that Brazil has not established that "the export credit guarantee programmes at issue are generally applied to scheduled agricultural products other than rice and other unscheduled agricultural products (not supported under the programmes) in a manner which threatens to lead to circumvention of United States export subsidy commitments within the meaning of Article 10.1 of the *Agreement on Agriculture*"; and

finds that the Panel did not err in confining its examination of Brazil's threat of circumvention claim to scheduled products other than rice and unscheduled products not supported under the United States' export credit guarantee programs;

as regards the ETI Act of 2000, declines Brazil's request that the Appellate Body reverse the Panel's conclusion that Brazil did not make a *prima facie* case that the ETI

Act of 2000 is inconsistent with the United States' WTO obligations; and

~~as regards~~ Article XVI:3 of the GATT 1994:

finds it unnecessary, for the purposes of resolving this dispute, to rule on the interpretation of the phrase "any form of subsidy which operates to increase the export" in Article XVI:3 of the GATT 1994, and neither upholds nor reverses the Panel's findings in this regard; and

declines to rule on Brazil's conditional request for the Appellate Body to find that the price-contingent subsidies cause the United States to have "more than an equitable share of world export trade" in upland cotton, in violation of the second sentence of Article XVI:3 of the GATT 1994.

The Appellate Body recommends that the Dispute Settlement Body request the United States to bring its measures, found in this Report and in the Panel Report as modified by this Report to be inconsistent with the

Agreement on Agriculture and the *SCM Agreement*, into conformity with its obligations under those Agreements.

Signed in the original in Geneva this 10th day of February 2005 by:

Merit E. Janow, Presiding Member

Luiz Olavo Baptista, Member

A.V. Ganesan, Member

I. Findings and Conclusions

1. For the reasons set forth in this Report, the Appellate Body:

(a) upholds the Panel's finding, in paragraph 7.37 of the Panel Reports, that the alleged "payments", within the meaning of Article 9.1(c) of the *Agreement on Agriculture*, in the form of low-priced sales of C beet to sugar producers, fell within the Panel's terms of reference;

(b) upholds the Panel's finding, in paragraphs 7.191, 7.198, 7.222, and 8.1(a) of the Panel Reports, that Footnote 1 to Section II, Part IV of the European Communities' Schedule does not enlarge or otherwise modify the European Communities' commitment levels specified in that Schedule;

(c) upholds the Panel's finding, in paragraph 7.292 of the Panel Reports, that the alleged payments in the form of low-priced sales of C beet to sugar producers are "financed by

virtue of governmental action", within the meaning of Article 9.1(c) of the *Agreement on Agriculture;*

(d) upholds the Panel's finding, in paragraph 7.334 of the Panel Reports, that the production of C sugar receives a "payment on the export financed by virtue of governmental action", within the meaning of Article 9.1(c) of the *Agreement on Agriculture*, in the form of transfers of financial resources through cross-subsidization resulting from the operation of the European Communities' sugar regime;

(e) upholds, as a result of its findings under (c) and (d) above, the Panel's finding, in paragraph 8.1(f) of the Panel Reports, that there is *prima facie* evidence that the European Communities has been providing export subsidies, within the meaning of Article 9.1(c) of the *Agreement on Agriculture*, to its exports of C sugar since 1995;

(f) upholds, as a result of its findings under (b), (c), (d), and (e) above, the Panel's

finding, in paragraphs 7.340 and 8.3 of the Panel Reports, that the European Communities, through its sugar regime, acted inconsistently with its obligations under Articles 3.3 and 8 of the *Agreement on Agriculture;*

(g) upholds the Panel's finding, in paragraphs 7.374 and 8.4 of the Panel Reports, that the European Communities' violations of the *Agreement on Agriculture* nullified or impaired the benefits accruing to the Complaining Parties under the *Agreement on Agriculture;*

(h) upholds the Panel's finding, in paragraph 7.74 of the Panel Reports, that the Complaining Parties acted in good faith, under Article 3.10 of the DSU, in the initiation and conduct of the present dispute settlement proceedings and, assuming *arguendo* that estoppel applies, have not been estopped, through their actions or silence, from alleging that the European Communities' exports of C sugar are in excess of its export subsidy reduction commitments;

(i) finds that the Panel erred, in paragraph 7.387 of the Panel Reports, in exercising judicial economy, and thereby failed to discharge its obligation under Article 11 of the DSU with respect to the Complaining Parties' claims under Article 3 of the *SCM Agreement*, but is not in a position, and therefore declines, to complete the legal analysis and to examine the Complaining Parties' claims under the *SCM Agreement* left unaddressed by the Panel; and

(j) finds that the European Communities' Notice of Appeal satisfies the requirements of Rule 20(2)(d) of the *Working Procedures for Appellate Review*.

2. The Appellate Body recommends that the Dispute Settlement Body request the European Communities to bring Council Regulation (EC) No. 1260/2001, as well as all other measures implementing or related to the European Communities' sugar regime, found in this Report, and in the Panel Reports as modified by this Report, to be inconsistent with the

Agreement on Agriculture, into conformity with its obligations under that Agreement.

Signed in the original at Geneva this 9th day of April 2005 by:

A.V. Ganesan, Presiding Member

Merit E. Janow, Member

Yasuhei Taniguchi, Member

Supreme Court, U.S.
FILED
MAR 2 4 2006
OFFICE OF THE CLERK

No. 05-854

In The

Supreme Court of the United States

James Widtfeldt et al,
Petitioner
v.
Ann Veneman, et al,
Defendants.

On Appeal From
The United States Court of Appeals
For the Eighth Circuit

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI

James Widtfeldt
PO Box 877, 103 East State
Atkinson, Nebraska 68713
Tel 402/925-2535 Fax 402/925-2564
Email:
techtute@yahoo.com, widt@threeriverwb.net

March 23, 2006

Question Presented

1. The Petition for Certiorari should be reconsidered, upheld, and the case should be remanded for reconsideration to the US District Court of Nebraska, with directions to decide it on the merits rather than as a default case. There are too many seeming coincidences occurring simultaneously, indicating bad faith somewhere in government in the previous dismissal of this case, and an opportunity to be heard should be granted on the merits.

In addition to the parties named in the caption, the following party appeared and is petitioner herein:

James Widtfeldt Revocable Trust

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TABLE OF AUTHORITIES Cases & Statutes

PETITION FOR RE-HEARING ON

PETITION FOR WRIT OF CERTIORARI

Petitioner James Widtfeldt et al, respectfully petitions for a re-hearing on the petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case, appearing in the appendix to the Petition for Certiorari at A9, A12, A18, A20, A22, A34 and A 40.

Petitioner requests to amend his petition as shown by the proposed amended petition filed with the court, and to have the default decision of September 15, 2005 reversed for trial in the Nebraska District Court.

OPINION BELOW

On February 27, 2006, the United States Supreme Court entered its order, "The petition for a writ of certiorari is denied."

The other decisions below are as stated in the Petition for Writ of Certiorari.

JURISDICTION

This court already seized jurisdiction for the reasons shown in the Petition for Writ of Certiorari, in entering its Order of February 27, 2006.

RELEVANT STATUTORY PROVISIONS

The relevant statutory provisions are as shown in the Petition for Writ of Certiorari, Appendix B.

STATEMENT

This is a case involving electronic mail, and the first case Petitioner filed in the federal courts while relying in part, on electronic mail.

FINALITY RULE AND "AT RISK-PRODUCER"

The courts continue to find in favor of Petitioners in an example closely paralleling that of Petitioner herein. In *Clinger v Farm Service*

Agency, 2006 WL 581192 (D. Idaho, March 8, 2006), the local FSA helped Clinger and others select fields for destruction of the crop, to be eligible for the PIK program.

Quoting the opinion from page 2 of the WL slip copy:

"Relying on these official approvals, the farmers then plowed under their designated sugar beet crops in late October or early November of 2001. The CCC supplied the sugar to the producer, and the farmers all received their PIK payments by the end of 2001.

More than ninety days later, the national FSA audited the program. Notice SU-70 gives authority to the FSA's Deputy Administrator of Farm Programs

(DAFP) to review PIK contracts. See section 7.C. In this case, the DAFP decided that two of the farmers, (Clinger and Thompson) were not "producers" and that the five others (Bean, Toner, Wrigley, Inouye and Funk) were not "at risk". He therefore declared all ineligible and demanded repayment.

Petitioner herein is in much the same plight. The local FSA agents provided all the details and directed Petitoner exactly how to fill out the paperwork, explaining what to do, and what could not be done. Several years later, the FSA decided Petitioner was not "a producer" or "at risk".

By implication, Petitioner's lessees must have been at risk, but by the time of the FSA producer-at risk decision, it was too late for the lessees to sign up.

In fact, the lessees were extremely reluctant to sign up, because the FSA had arranged Petitioner Widtfeldt's acreages in a manner which would have forced each lessee to accept substantial risk from any error that any other lessee had made.

Only in 2004 did the local FSA "reconstitute" the Widtfeldt acreage into separate acreages for each lessee, so that the lessees were willing to accept the risk.

From Clinger, supra we read on page 3 of the slip law from Westlaw, *"Once a farmer invests time and resources to harvest a field, there is no incentive to destroy a crop. Conversely, there is no incentive to make an irrevocable offer and watch a crop rot in the ground waiting for an eligibility determination or to prematurely destroy a crop and hope for acceptance. Therefore, if the FSA or CCC wants the benefit of controlling market prices or ridding itself of surplus sugar, then it has to be decisive and farmers have to be able to rely on what the agency tells them.*

Petitioner Widtfeldt herein, as in Clinger, supra,

suffers from an abuse of the Finality Rule, appearing on page 3 of the Westlaw slip law of the case. 7 U.S.C. Section 7001(a)(3).

If the FSA is to be allowed to get out of an eligibility determination, then the Petitioner should be allowed to get out of higher real estate valuations and higher federal estate taxes caused by the farm program.

RECAPTURE OF LAND APPRECIATION

ONLY AS PROVIDED BY STATUTE

In another parallel in a similar fact situation (the differences are not material to this analysis), the case *Davies v Johanes* (sp), 409 F.Supp.2d 1150

(Western D. Missouri January 11, 2006), the petitioner Larry D. Davies brought an action challenging the USDA attempt to recapture a portion of the appreciation in value of the farm, upon the expiration of a shared appreciation agreement (SAA).

The US District Court for the Western District of Missouri decided that the USDA could not go by the new regulations which would have allowed the USDA a much increased take from the farmer Davies, but had to go by the regulations in effect at the time of the enrollment in the crop program.

Since the FSA in the present case, with

Widtfeldt, does not have any right to appreciation, the government crop enrollment should either be upheld and the US District Court of Nebraska decision reversed and default judgment nullified and the case retried with directions to accept appellant's enrollment, and if any future FSA-USDA enrollment is not approved, to allow appellant land valuation to be reduced for state real estate tax purposes, to those values which would have been in effect absent the USDA-FSA farm program.

Horn Farms, Inc. vs Veneman, 319 F. Supp 2d 902 (May 20, 2004), is shown to be more and more deserving of approval nationwide, as urged in the

Petition for Certiorari herein, rather than to allow the USDA-FSA to knock off one farmer at a time in inconsistent jurisdictions where the FSA-USDA is still allowed t violate the "Finality Rule" of Clinger, supra, with impunity.

CRIMINAL CASES CONTINUE TO EXACT PUNISHMENT FROM WRONGDOERS RATHER THAN TO BLAME VICTIM AS IN PRESENT CASE

Inconsistent with this Court's decision of February 27, 2006 where this court wrongly refused the Widtfeldt Petition for Certiorari, which is the subject of this Petition for Rehearing,

the Supreme Court, in the recent case, *United States v Grubbs*, 2006 WL 693453, March 21, 2006, upheld an anticipatory search warrant, stating that the search warrant did not violate the fourth amendment, there was probable cause, and that the triggering condition for an anticipatory search warrant did not have to be set forth in the warrant.

In other words, when this Court is shown all the facts and the wrongdoing party, the Court makes the right decision, but when the Court can't see who made the electronic worms, the computer viruses, and the malicious ads which stymied Petitioner Widtfeldt's proper actions in the lower

court decisions, then the Court won't take the proper action.

The distinction seems to be, this Court is not willing to go to the abstraction of saying, somebody did something bad resulting in Petitioner Widtfeldt losing his day in court, instead the court can only make that decision in a case when the culpable party was present and that party's actions were identified.

The proper action of this court is to accept the abstract reasoning necessary, yes there are lots of electronic worms, viruses, and malicious ads, and yes the said electronic malware cannot be anticipated, and yes, if electronic malware

happens and prevents a day in court to a party, the parties should be allowed to have their day in court, and distinguish from **Grubbs, supra** that the person who actually made the malware, in the distinction, need not be present in court and be found guilty, particularly where the ads are often done by thousands of different electronic sources and the the persons causing the electronic malware may have serendipitously created an impenetrable electronic fog by their separate non - criminal efforts, but the court should decide that the deprived parties are still entitled to their day in court, rather than the court defaulting the electronic malware victim at the earliest possible

second and being glad to get rid of a case by any means whatever, which tends to impugn the impartiality of the court.

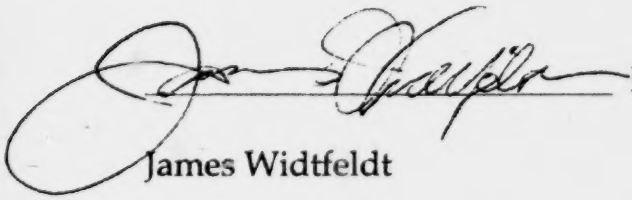
Although the lower court judge thought Petitioner Widtfeldt had made no effort to access the court records such as on Pacer, in fact Petitioner made lots of efforts but Petitioner's efforts were all stymied or consumed by malware, and the reasonable understanding that the court, having started a paper record, would continue a paper record to the end of the case.

The case **International Airport Centers vs Citrin**, 2006 WL 548995, decided March 8, 2006, in a civil action, decided that a violation of the

Computer Fraud and Abuse Act, 18 U.S.C. section 1030, had occurred even without a "transmission" as found by the lower court appealed from. Citrin had arguably damaged his former employer's computers by a program to delete files, after Citrin had been terminated from work. Once again, the Court does OK while faced with an actual fact situation by which computer damage is caused by an identified person. However, in the present case, absence of a specific culprit caused the court's perceptory abilities to falter, and no day in court could be had because of the refusal of Petitioner's Petition for Certiorari.

CONCLUSION

Petitioner respectfully requests that this court determine that the trial court's default judgment due to Petitioner's computer woes is not right, and allow Petitioner Widtfeldt his day in court.



March 23, 2006

James Widtfeldt

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APPENDICES -- ADDENDUM

I, James Widtfeldt, do swear or declare that on this date, March 24, 2006, as required by Supreme Court Rule 29, I have served the enclosed Rule 12.3 and Rule 44 notice that the case (previously docketed January 5, 2006, with previously certified notice of January 14, 2006, with three copies of the Petition for Writ of Certiorari) and the undersigned certifies a true copy of the above and foregoing Petition for Rehearing in the US Supreme Court, was served on the following on **March 24, 2006** by placing in the regular or certified US mail, postage prepaid, addressed to the following:

Solicitor General of the United States,

Department of Justice, Washington, D.C., 20530

Robert L. Homan, US atty, 1620 Dodge Street #1400, Omaha, Nebraska 68102

Richard Kilmurry, 47798 on 888 Road, Atkinson, Nebraska 68713

Bonny Kilmurry, 47798 on 888 Road, Atkinson, Nebraska 68713

Hilger Brothers Partnership, # 1141 on 38 Road, Lot 1, David City, Nebraska 68632

Gary A. Burival 49250 on 876th Road, O'Neill, Nebraska 68763

Joyce A. Burival 49250 on 876th Road, O'Neill, Nebraska 68763

George A. Moyer, 114 West 3rd Street, PO Box 510, Madison, Nebraska 68748-0510

Jon Bruning, Neb Att'y Gen'l, 2115 State Capitol,

PO Box 98920, Lincoln, NE 68509-8920

The originals to the US Supreme Court were

mailed by certified US mail March 24, 2006 to:

United States Supreme Court, 1 First Street, N.E.,

Washington, DC 20543

3-23-06

James Widtfeldt

I, James Widtfeldt, do swear or declare that on this date, March 23, 2006, as required by Supreme Court Rule 29, Rule 12.3 and Rule 44 that the case (previously docketed January 5, 2006) Petition for Rehearing in the US Supreme Court, was **certified on March 23, 2006** as not being filed for delay, but rather because

A) The chronology of events gave the appearance the FSA may have wrongly approved payments to Petitioner to induce Petitioner to approve a higher, now erroneous Federal Estate Tax from Petitioner's father's estate, and then, after lengthy procedures Estate Tax Audit completed on or about March 2002, reneged on the FSA-USDA payments.

B) Petitioner also has noticed that many FSA-USDA farm support payments are challenged in a manner to politically embarrass prominent persons, including at least one of Petitioner's former clients, and Petitioner believes that situation and circumstances exists and applies in this case, as Petitioner was prominent in supporting the Low Level Radioactive Waste Siting in Boyd County, Nebraska, upon which Nebraska defaulted and suffered a judgment against Nebraska in a judgment handed down about the time the FSA began its forfeiture proceedings.

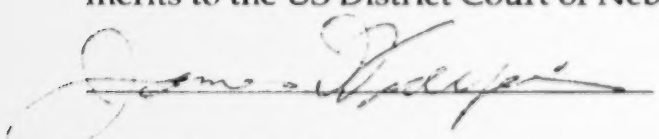
C) Additional "coincidental" challenges to petitioner occurring about the same time, and

raising questions about the impartiality of this proceeding, included the actions of the City of O'Neill refusing to pick up garbage and later filing nuisance charges against appellant at a large former motel in O'Neill which was being rented as apartments to Hispanics, and a long series of grievances filed by local lawyers and judges in O'Neill against appellant, beginning about 2001. Petitioner hauled tremendous amounts of garbage personally for several years and has now hired others to haul garbage, due to the City of O'Neill refusal.

D) Additionally, Petitioner was faced with large numbers of virus, worm and electronic malware ads, on a scale not previously

contemplated, for the first time at the time of this case in 2004, and Petitioner was in Petitioner's first case in Federal Court with electronic filing, and did not expect the electronic problems that ensued. Petitioner's internet service provider was local (elkhorn.net), and that ISP as well as others, now have much improved spam and malware vigilance.

For this reason, circumstances show this Petition for Rehearing is not for delay, and should be approved, returned to the lower court to be proved, by returning this case for a decision on the merits to the US District Court of Nebraska.



James Widtfeldt

A3 Order subject of Petition for ReHearing

Order of the United States Supreme Court entered February 27, 2006 in Case No. 05-854, James Widtfeldt v United States, et al.